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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,436

04/12/2004

Richard S. Chomik

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/822,436

Applicant(s)

CHOMIK, RICHARD S.

Examiner

James N. Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28-46 and 48-53 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 42-44, 46 and 48-53 is/are allowed.  
6) ☒ Claim(s) 28-41 and 45 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 28-33, 36, 37 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawai 3,071,281 in view of Daenen et al. 5,868,273.

Sawai teaches a container assembly comprising a container body 10 with upper and lower open threaded necked ends 18, a bottom cap 24 with an end wall, side wall and threads, and a sealing member 30, with the physical relationships as set forth in the claims. Sawai however does not teach forming his bottom cap with a plurality of equidistantly spaced holes in the end wall. Daenen teaches a similar closure 14 for a container which specifically teaches forming a plurality of equidistantly spaced holes 52 in the end wall which is covered by the sealing member 42. This allows the seal to be fully bonded and supported by both sides of the cap to prevent the seal from becoming dislodged or moving. It would have been obvious to one of ordinary skill in the art to modify the closures of Sawai in the manner as taught by Daenen in order to allow the seal to be fully bonded and supported by both sides of the cap to prevent the seal from becoming dislodged or moving from the Sawai container since both inventions are directed to improvements in container technology.

As to the limitation present in claim 32, this is a property of the material which applicant is forming his seal from and therefore is a result effective variable.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the seal of Sawai as modified by Daenen of a material with the hardness claimed, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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3. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawai 3,071,281 in view of Daenen et al. 5,868,273 as applied to claims 28-33, 36, 37 and 41 above, and further in view of Bridges 5,312,013.

Formation of a bottom closure with spaced inner and outer walls in a manner in which the closure outer wall is substantially contiguous with the container outer wall is old and well known in the art as taught by Bridges. See in particular figure 7.

4. Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawai 3,071,281 in view of Daenen et al. 5,868,273 as applied to claims 28-33, 36, 37 and 41 above, and further in view of Vinciguerra 4,828,126.

Formation of a rim of a container such that it has an inwardly directed flange in the manner as taught by Vinciguerra is an old and well known alternative to the rim shape taught by Sawai and would have been an obvious alternative to one of ordinary skill in the art.

#### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 40 and 45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-54 of U.S. Patent No. 6,719,159. Although the conflicting claims are not identical, they are not patentably distinct from each other because the invention as currently claimed was fully disclosed in the prior patent and nothing prevented applicant from claiming the current invention in the prior patent.

7. Claims 40 and 45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,142,325. Although the conflicting claims are not identical, they are not patentably distinct from each other because the invention as currently claimed was fully disclosed in the prior patent and nothing prevented applicant from claiming the current invention in the prior patent.

#### ***Allowable Subject Matter***

8. Claims 42-44, 46 and 48-53 allowed.

#### ***Response to Arguments***

9. Applicant's arguments filed 17 April 2006 have been fully considered but they are not persuasive.

Applicant argues there is no motivation to combine the references because such a combination would violate the economic construction of Sawai. However, Applicant's arguments only speculate on the cost of construction and are not based on any evidence in the disclosure itself. In other words, Applicant

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has not provided evidence that the modification could not be made in an economic fashion. The Examiner asserts the modification would have been obvious to one having ordinary skill in the art at the time the invention was made for the reasons noted above.

Applicant notes they will file a Terminal Disclaimer upon the allowance of the claims, however, the claims cannot be allowed without the filing of the Terminal Disclaimer because Obvious Type Double Patenting is a rejection of the claims in view of a previously issued patent for the same invention.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER